



caliber as the murder weapon;

2. That part of the Petition which seeks relief on the ground that trial counsel was ineffective for failing to object to the failure of the court to give a jury instruction specifically addressing witness Orlando O'Neal's credibility in light of his pending robbery charge at the time he made inculpatory statements against petitioner is **DENIED**; and

3. Petitioner has withdrawn that part of the Petition which seeks relief on the ground that trial counsel was ineffective for failing to object to the portion of the state court's concluding instructions which described petitioner's exercise of his Fifth Amendment right as a "failure" to testify. Accordingly, that claim is **MARKED "WITHDRAWN"**; and

4. Petitioner's conviction and sentence are **VACATED**. Respondents shall **RELEASE** petitioner from custody unless he is retried within 180 days of the date of this Order.

**IT IS FURTHER ORDERED** that:

1. The R & R of United States Magistrate Judge Carol Sandra Moore Wells dated February 25, 2011, is **APPROVED IN PART AND REJECTED IN PART**, as follows:

a. Those parts of the R & R relating to Grounds One and Three of the Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2254 are **APPROVED** and **ADOPTED** as **MODIFIED** in this Order and accompanying Memorandum; and

b. That part of the R & R relating to Ground Two of the Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2254 is **REJECTED**;

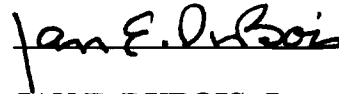
2. Petitioner's Objections to the R & R are **OVERRULED IN PART AND SUSTAINED IN PART**, as follows:

a. That part of the Objections relating to Ground One of the Petition for Writ

of Habeas Corpus Under 28 U.S.C. § 2254 is **OVERRULED**; and

- b. That part of the Objections relating to Ground Two of the Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2254 is **SUSTAINED**.

**BY THE COURT:**

A handwritten signature in black ink, appearing to read "Jan E. Dubois", written over a horizontal line.

**JAN E. DUBOIS, J.**